

Attorney Docket No. 5190

## IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

FIRST NAMED INVENTOR:	SERIAL NO:	FILING DATE	ART UNIT:	CONF. NO.
Hildegard M. Kramer	10/075,355	Feb. 14, 2002	1633	8887
TITLE:			EXAMINER:	
Biocompatible Fleece For Hemostasis and Tissue Engineering			Joseph T. Woitach	

## CERTIFICATE OF FACSIMILE TRANSMISSION

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Commissioner for Patents  
PO. Box 1450  
Alexandria, VA 22313-1450

**OFFICIAL**

**REPLY WITH ELECTION TO  
RESTRICTION REQUIREMENT**

Sir:

In response to the Office Action mailed from the Patent Office on June 15, 2004, applicant submits the following reply with election. Because this reply is submitted within 1 months of the mailing of the Office Action, applicant believes that no fee is due for this submission. Favorable examination of the elected claims is respectfully requested in view of the following remarks:

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### REMARKS

Applicant wishes to point out an error in the cover sheet of the Office Action which is stated to be responsive to a communication from Applicant filed on 14 February 2002 (which is the filing date of the present application). The date should have been April 6, 2004 -the filing date of the reply to the prior Office Action. Applicant duly notes that the reply appears to have been considered by the Examiner as transpired from the Examiner's comments in the detailed section of the Office Action.

Applicant thanks the Examiner for the prompt supply by facsimile of the missing page 4 of the June 15 Office Action.

#### Election:

The claims have been restricted into four groups as follows:

- I. Claims 1-12, 15, and 16 to a method of making a fleece
- II. Claims 14, 17-20, 22, 24-36, and 48-50 to a fleece made by the method of Group I
- III. Claims 21, 23, and 50 to the fleece with cells and its uses
- IV. Claims 37-47, 52, and 53 to a method of treatment of a wound

Applicant hereby reiterates the election of the claims of group I, with traverse.

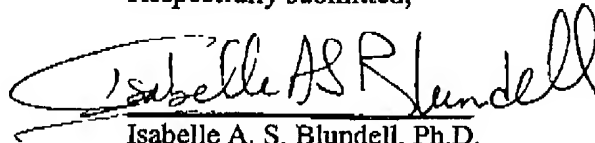
In support of the restriction, the Examiner has invoked the basis set forth in MPEP §806.5(f) to restrict a process from a product made by the process without fully developing a rationale that supports the rejection. MPEP §806.5(f) specifically requires of an examiner to provide at least one example to support the rejection (see particularly Examiner note #2 to the form paragraph 8.18, which calls for exemplification within the body of the Form Paragraph as follows "in bracket 3, use one or more of the following reasons: (a) --the process as claimed can be used to make a materially different product such as ....--, (b) the product as claimed can be made by a materially different process such as .....--") (emphasis added). The Examiner has failed to provide the practical example to support the restriction. Instead, the Examiner has relied on the vague invocation of a general statement "by other methods known in the art"; such statement is inadequate and does not provide applicant with the proper notice of the basis of the restriction. The Examiner should provide at least one practical example of such "other methods

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known in the art". Also the Examiner has also failed to meet his burden when he asserts that the method may be used to make different products such as those of groups II and III. This appears to be a circular reasoning. The fleece of group III are defined by claims depending from those of group II (e.g. claims 21 *et seq.* depend from claim 20) and are distinct only on the basis of additional components added to the fleece, merely cells or biological agents which are incorporated into the fleece. The fleece are the same as those resulting from the process of group I: e.g., claim 4 or 16, which both depend from claim 1, calls for the step of mixing cells or biological agents and thus making fleece of the type of group III, while claim 1 (of group I) makes fleece of the type of group II. Thus applicant respectfully submits that this restriction between group I and groups II and III has not been fully substantiated. Accordingly, applicant also elects the species of group II for further examination and thus requests examination of the claims of group I and II, and kindly requests rejoinder of the species of group III upon determination that the linking claim 20 is allowable.

Respectfully submitted,



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